

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC

Plaintiff,

v.

20-20 DESIGN, INC.,

Defendant.

Civil Action No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a declaratory judgment action brought by the plaintiff Real View, LLC ("Real View") against 20-20 Design, Inc. ("20-20"), seeking a declaratory judgment establishing that Real View has not infringed 20-20's alleged copyright rights in the user interface of a computer program.

PARTIES

2. Plaintiff Real View, a start-up software company, is a Massachusetts Limited Liability Corporation with a principal place of business at 1050 Winter Street, Waltham, Massachusetts.

3. Defendant 20-20, is a publicly held Canadian corporation with annual revenues in excess of \$60 million. 20-20 sells its software and services throughout the United States including, on information and belief, in Massachusetts.

JURISDICTION AND VENUE

4. The plaintiff brings this action seeking a declaration of rights with respect to federal copyright law. The Court has jurisdiction over this action under 28 U.S.C. §

1338(a) (exclusive jurisdiction of federal courts over copyrights) and 28 U.S.C. § 2201 (Declaratory Judgment Act).

5. Plaintiff is informed, and believes and thereon alleges, that the defendant 20-20 has sufficient contacts with this district generally and, in particular with the events herein alleged, that it is subject to the exercise of jurisdiction of this Court over its person. Venue is proper in this district under 28 U.S.C. § 1391(b) and (d).

THE PRESENT DISPUTE

6. Real View is in the business of designing, developing, marketing and licensing software used to design residential and commercial kitchens and baths. Real View's software, sold under the name "ProKitchen[®]", allows consumers to visualize, in detail, the placement, color and texture of kitchen cabinets and appliances while redesigning or building a kitchen. After the kitchen has been designed the ProKitchen[®] software permits kitchen designers to price the cost of building or upgrading the kitchen and creates an order sheet listing the cabinets, so they may be ordered directly from the cabinet manufacturers.

7. 20-20 is also in the business of developing, marketing and licensing kitchen design software. However, 20-20 is the largest kitchen design software company in North America. While 20-20 holds a very large share of the kitchen design market, Real View's innovative product is far superior to the 20-20 product in terms of technological sophistication, flexibility and ease of use, and is licensed for a small fraction of 20-20's prices. Because of its superior product and lower prices Real View poses a serious competitive risk to 20-20.

8. On November 6, 2007 Real View received a letter from 20-20's attorneys asserting that Real View had illegally copied 20-20's kitchen design software. A true copy of this letter is attached as Exhibit A. This was the first communication Real View received from 20-20. In the lawyer's letter 20-20 alleged:

Many of the texts appearing throughout the ProKitchen [sic] are virtually identical to those appearing in 20-20's Software, the icons are nearly all virtually identical, and language in the sample floor plan, upon direct comparison, shows strong evidence of direct copy [sic]. Furthermore, Real View's ProKitchen has exactly the same overall appearance as 20-20's Software and is therefore more than likely to cause confusion as to the origin of Real View LLC's software product.

As such, our analysis leads us to the conclusion 20-20 Real View's software infringes on our client's copyrights and constitute [sic] clear acts of unfair competition.

The letter from 20-20's lawyers goes on to state:

Needless to say, our client has no intention of tolerating such a blatant violation of its intellectual property rights. 20-20 transacts business in the United States of America and can avail itself of the American court system.

The letter concludes with a threat of litigation:

We have received instructions to retain American counsel and launch legal proceedings against you unless we receive, on or before November 19, 2007, written confirmation from a duly authorized officer of your company wherein:

In effect, 20-20 is accusing Real View of "software interface infringement."

9. The letter goes on to enumerate 9 separate demands, including the demand that Real View "cease and desist" from selling its ProKitchen[®] software, deliver all "infringing copies" of ProKitchen[®] to 20-20, provide 20-20 with an accounting of all profits, and identify all purchasers of ProKitchen.[®] (See Exhibit A). If Real View were

to comply with these requests it would have the effect of putting Real View out of business.

10. In fact, Real View's software user interface bears no resemblance to the user interface of 20-20's software, except where there are a highly limited number of ways to express the idea of kitchen design software. In those instances Real View's interface is protected from allegations of copyright infringement under the "scenes a faire" and merger copyright doctrines.

11. The "icons" that are used by the Real View software are substantially different from the 20-20 icons, except where they are standard Microsoft Windows icons, such as "open file," "save file," and similar common commands. These commands are used by thousands of software programs, and have become generic software user interface commands.

DECLARATORY RELIEF OF NON-INFRINGEMENT

12. Real View repeats and incorporates herein by reference the allegations in the preceding paragraphs of this complaint.

13. The threat to bring legal action against Real View based on the allegation that the user interface of its program infringes 20-20's user interface puts Real View in serious apprehension of litigation. 20-20's threat of litigation has created an actual controversy, ripe for adjudication.

14. Based on the foregoing allegations, there exists between the parties a substantial controversy of sufficient immediacy and reality to warrant declaratory relief.

15. Plaintiff seeks declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rules of Civil Procedure 57 that it has not infringed 20-20's alleged copyrights in 20-20's software user interface.

WHEREFORE, the plaintiff Real View, LLC prays for judgment as follows:

1. For a declaration that it has not infringed the defendant 20-20's copyrights;
2. For plaintiff's attorney's fees;
3. For plaintiff's costs and disbursements in this action; and
4. For such other equitable and legal relief as the Court shall find just and proper.

REAL VIEW, LCC

By its attorneys,

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